

IN THE MATTER OF:

Order No. 15-XXX-SW

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, and the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18, as amended, and the ADEM Administrative Code promulgated there under, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) makes the following findings of fact:

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4. On July 10, 2014, the Department issued a renewal Solid Waste Disposal Permit number 49-22 to the Permittee for the operation of a construction/demolition landfill (hereinafter "landfill") located at 5237 Henry Road, Eight Mile, Mobile County, Alabama.

5. On March 24, 2014, ADEM Consent Order No. 14-047-CSW was issued requiring the Permittee to take certain actions in regard to violations of the Solid Wastes and Recyclable Materials Management Act, including having at least one certified operator on-site during times of operation.

6. On September 16, 2014, Department personnel inspected the Permittee's landfill to determine compliance with the ADEM Administrative Code. During the inspection the following violations were documented:

a. ADEM Admin. Code r. 335-13-4-.29(1) requires that owners or operators of a landfill unit must record specified information and retain that information in an operating record available for review at the facility, or in an alternate location approved by the Department. At the time of the inspection, Department personnel documented that the Permittee had failed to maintain an operating record for review.

b. ADEM Admin. Code r. 335-13-12-.01 requires all public waste management facilities in the State to have at least one certified operator on-site during hours of operation. At the time of inspection, Department personnel documented that the Permittee had failed to have a certified operator on-site.

7. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, , in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the

public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Permittee failed to comply with certain provisions of ADEM Admin. Code div. 335-13 regarding landfill operations. The Department is unaware of any irreparable harm to the environment, or any immediate threat to human health or the safety of the public as a result of this violation.

B. THE STANDARD OF CARE: The Permittee failed to comply with certain solid waste disposal requirements even after receiving notice from the Department.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that the Permittee avoided costs associated with training and certification to become a certified landfill operator.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts employed by the Permittee to mitigate potential effects upon the environment that may have been created as a result of the violation listed.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee does have a history of similar violations.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$7,500.00 is appropriate given the repeat actions of the violator, and in keeping with a penalty range imposed by the Department for similar violations at other permitted facilities, as follows (See Attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Landfill Operation Requirements	\$0 - \$25,000

ORDER

Based on the foregoing findings of fact and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), 22-27-7 and 22-27-11, it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, the Permittee shall pay to the Department a civil penalty in the amount of \$7,500.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified check or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference the Permittee's name and address and the ADEM Administrative Order number of this action.

B. That immediately, upon the issuance of this Order and continuing each and every day thereafter, the Permittee shall comply with all applicable provisions of ADEM Admin. Code div. 335-13, and Solid Waste Disposal Permit No. 49-22, and shall have at least one certified landfill operator on-site at all times of operation.

C. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Permittee for the violations cited herein.

D. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against the Permittee for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, 2014.

Lance R. LeFleur

Director

Attachment A

Brownlee Landfill LLC
Eight Mile, Mobile County
Facility ID No. 49-22

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to maintain operating record on-site	1	\$500	\$500	\$500	
Failure to have certified landfill operator on-site	1	\$1,000	\$2,000	\$2,000	Total of Three Factors
TOTAL PER FACTOR		\$1,500	\$2,500	\$2,500	\$6,500

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
Total Adjustments (+/-) <i>Enter at Right</i>	\$0

Economic Benefit (+)	\$1,000
Amount of Initial Penalty	\$7,500
Total Adjustments (+/-)	
FINAL PENALTY	

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.